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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN ALCAZAR, individually and
on behalf of all others similarly
situated.

Plaintiff,

V.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
corporation; LANDRY'S PAYROLL,
INC., a Delaware corporation; and
DOES 1 to 10, inclusive.

Defendants.

CASE No.:

CLASS ACTION COMPLAINT

1. VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990, 42
U.S.C. §12181
 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT
DEMAND FOR JURY TRIAL

Plaintiff Juan Alcazar (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action based upon personal knowledge as to himself and his own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of their attorneys.

NATURE OF THE ACTION

1. Plaintiff is a visually-impaired and legally blind person who requires screen-reading software to read website content using his computer. Plaintiff uses

the terms “blind” or “visually-impaired” to refer to all people with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200. Some blind people who meet this definition have limited vision. Others have no vision.

5 2. Plaintiff, individually and on behalf of those similarly situated persons
6 (hereafter “Class Members”), brings this Class Action to secure redress against
7 Defendant Bubba Gump Shrimp Co. Restaurants, Inc., Landry’s Payroll, Inc.
8 (“Defendants”) and DOES 1-10, for its failure to design, construct, maintain, and
9 operate its website to be fully and equally accessible to and independently usable
10 by Plaintiff and other blind or visually-impaired people. Defendant’s denial of full
11 and equal access to its website, and therefore denial of its products and services
12 offered thereby and in conjunction with its physical locations, is a violation of
13 Plaintiff’s rights under the Americans with Disabilities Act (“ADA”) and
14 California’s Unruh Civil Rights Act (“UCRA”).

15 3. Because Defendant's website, <https://www.bubbagump.com/>, (the
16 "Website" or "Defendant's website"), is not fully or equally accessible to blind and
17 visually-impaired consumers, resulting in violation of the ADA, Plaintiff seeks a
18 permanent injunction to cause a change in Defendant's corporate policies, practices,
19 and procedures so that Defendant's website will become and remain accessible to
20 blind and visually-impaired consumers.

THE PARTIES

22 4. Plaintiff, at all times relevant and as alleged herein, is a resident of San
23 Mateo County, California. Plaintiff is legally blind, visually-impaired handicapped
24 person, and member of a protected class of individuals under the ADA, pursuant to
25 42 U.S.C. § 12102(1)-(2), and the regulations implementing the ADA set forth at
26 28 CFR §§ 36.101 *et seq.*

27 5. Defendant is a Delaware corporation, with its headquarters in Houston,
28 Texas. Defendant's servers for the website are in the United States. Defendant

1 conducts a large amount of its business in California, and the United States as a
2 whole. These restaurants constitute places of public accommodation. Defendant's
3 restaurants provide to the public important goods and services. Defendant's website
4 provides consumers with a casual environment and access to a variety of seafood
5 beef, and poultry meal menu items which are all available to purchase online and at
6 restaurants locations. Consumers may also purchase gear merchandise, seek access
7 to information about promotions, restaurant locations, catering services, career
8 opportunities, and schedule social events.

9 6. Plaintiff is unaware of the true names, identities, and capacities of
10 Defendants sued herein as DOES 1 to 10. Plaintiff will seek leave to amend this
11 complaint to allege the true names and capacities of DOES 1 to 10 if and when
12 ascertained. Plaintiff is informed and believes, and thereupon alleges, that each
13 Defendant sued herein as a DOE is legally responsible in some manner for the
14 events and happenings alleged herein and that each Defendant sued herein as a DOE
15 proximately caused injuries and damages to Plaintiff as set forth below.

16 7. Defendant's restaurants are public accommodations within the
17 definition of Title III of the ADA, 42 U.S.C. § 12181(7).

18 8. The Website, <https://www.bubbagump.com/>, is a service, privilege, or
19 advantage of Defendant's services, products, and locations.

JURISDICTION AND VENUE

21 9. This Court has subject matter jurisdiction over the state law claims
22 alleged in this Complaint pursuant to the Class Action Fairness Act, 28 U.S.C.
23 §1332(d)(2)(A) because: (a) the matter in controversy exceeds the sum of \$5
24 million, exclusive of interest and costs; and (b) some of the class members are
25 citizens of a state (California) that is different from the state of citizenship of
26 Defendant (Delaware).

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1 10. Defendant is subject to personal jurisdiction in this District. Defendant
2 has been and is committing the acts or omissions alleged herein in the Northern
3 District of California that caused injury, and violated rights prescribed by the ADA
4 and UCRA, to Plaintiff and to other blind and other visually impaired-consumers.
5 A substantial part of the acts and omissions giving rise to Plaintiff's claims occurred
6 in the Northern District of California. Specifically, on several separate occasions,
7 Plaintiff has been denied the full use and enjoyment of the facilities, goods and
8 services of Defendant's website in San Mateo County. The access barriers Plaintiff
9 has encountered on Defendant's website have caused a denial of Plaintiff's full and
10 equal access multiple times in the past and now deter Plaintiff on a regular basis
11 from accessing Defendant's website. Similarly, the access barriers Plaintiff has
12 encountered on Defendant's website have impeded Plaintiff's full and equal
13 enjoyment of goods and services offered at Defendant's physical locations.

14 11. This Court also has subject-matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff's claims arise
16 under Title III of the ADA, 42 U.S.C. § 12181, *et seq.*, and 28 U.S.C. § 1332.

17 12. This Court has personal jurisdiction over Defendant because it
18 conducts and continues to conduct a substantial and significant amount of business
19 in the State of California, San Mateo County, and because Defendant's offending
20 website is available across California.

21 13. Venue is proper in the Northern District of California pursuant to 28
22 U.S.C. §1391 because Plaintiff resides in this District, Defendant conducts and
23 continues to conduct a substantial and significant amount of business in this District,
24 Defendant is subject to personal jurisdiction in this District, and a substantial
25 portion of the conduct complained of herein occurred in this District.

26 14. Defendant owns, operates and maintains brick and mortar restaurant
27 locations in the State of California. Defendant's restaurants offer goods and services
28 to the public. Defendant also offers good and services to the public through the

1 Website. Defendant's brick and mortar restaurant locations and website are
2 integrated and are public accommodations pursuant to 42 U.S.C. § 12181(7).

3 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

4 15. The Internet has become a significant source of information, a portal,
5 and a tool for conducting business, doing everyday activities such as shopping,
6 learning, banking, researching, as well as many other activities for sighted, blind
7 and visually-impaired persons alike.

8 16. In today's tech-savvy world, blind and visually-impaired people have
9 the ability to access websites using keyboards in conjunction with screen access
10 software that vocalizes the visual information found on a computer screen. This
11 technology is known as screen-reading software. Screen-reading software is
12 currently the only method a blind or visually-impaired person may independently
13 access the internet. Unless websites are designed to be read by screen-reading
14 software, blind and visually-impaired persons are unable to fully access websites,
15 and the information, products, and services contained thereon.

16 17. Blind and visually-impaired users of Windows operating system-
17 enabled computers and devices have several screen-reading software programs
18 available to them. Some of these programs are available for purchase and other
19 programs are available without the user having to purchase the program separately.
20 Job Access With Speech, otherwise known as "JAWS," is currently the most
21 popular, separately purchased and downloaded screen-reading software program
22 available for a Windows computer.

23 18. For screen-reading software to function, the information on a website
24 must be capable of being rendered into text. If the website content is not capable of
25 being rendered into text, the blind or visually-impaired user is unable to access the
26 same content available to sighted users.

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1 19. The international website standards organization, the World Wide
2 Web Consortium, known throughout the world as W3C, has published Success
3 Criteria for version 2.0 of the Web Content Accessibility Guidelines ("WCAG 2.0"
4 hereinafter). WCAG 2.0 are well-established guidelines for making websites
5 accessible to blind and visually-impaired people. These guidelines are adopted,
6 implemented and followed by most large business entities who want to ensure their
7 websites are accessible to users of screen-reading software programs. Though
8 WCAG 2.0 has not been formally adopted as the standard for making websites
9 accessible, it is one of, if not the most, valuable resource for companies to operate,
10 maintain, and provide a website that is accessible under the ADA to the public.

11 20. Within this context, the Ninth Circuit has recognized the viability of
12 ADA claims against commercial website owners/operators with regard to the
13 accessibility of such websites. *Robles v. Domino's Pizza, LLC*, Docket No. 17-
14 55504 (9th Cir. Apr 13, 2017), Court Docket No. BL-66. This is in addition to the
15 numerous courts that already recognized such application.

16 21. Each of Defendant's violations of the Americans with Disabilities Act
17 is likewise a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights
18 Act provides that any violation of the ADA constitutes a violation of the Unruh
19 Civil Rights Act. Cal. Civ. Code, § 51(f).

20 22. Further, Defendant's actions and inactions denied Plaintiff full and
21 equal access to their accommodations, facilities, and services. A substantial
22 motivating reason for Defendant to deny Plaintiff access was the perception of
23 Plaintiff's disability. Defendant's denial of Plaintiff's accessibility was a substantial
24 motivating reason for Defendant's conduct. Plaintiff was harmed due to
25 Defendant's conduct. Defendant's actions and inactions were a substantial factor in
26 causing the lack of access to Plaintiff. Unruh Civil Rights Act. Cal. Civ. Code, §
27 51.
28

1 23. Inaccessible or otherwise non-compliant websites pose significant
2 access barriers to blind and visually-impaired persons. Common barriers
3 encountered by blind and visually impaired persons include, but are not limited to,
4 the following:

- 5 a. A text equivalent for every non-text element is not provided;
- 6 b. Title frames with text are not provided for identification and
7 navigation;
- 8 c. Equivalent text is not provided when using scripts;
- 9 d. Forms with the same information and functionality as for sighted
10 persons are not provided;
- 11 e. Information about the meaning and structure of content is not
12 conveyed by more than the visual presentation of content;
- 13 f. Text cannot be resized without assistive technology up to 200
14 percent without loss of content or functionality;
- 15 g. If the content enforces a time limit, the user is not able to extend,
16 adjust or disable it;
- 17 h. Web pages do not have titles that describe the topic or purpose;
- 18 i. The purpose of each link cannot be determined from the link text
19 alone or from the link text and its programmatically determined link
20 context;
- 21 j. One or more keyboard operable user interface lacks a mode of
22 operation where the keyboard focus indicator is discernible;
- 23 k. The default human language of each web page cannot be
24 programmatically determined;
- 25 l. When a component receives focus, it may initiate a change in
26 context;
- 27 m. Changing the setting of a user interface component may
28 automatically cause a change of context where the user has not been

advised before using the component;

- n. Labels or instructions are not provided when content requires user input;
 - o. In content which is implemented by using markup languages, elements do not have complete start and end tags, elements are not nested according to their specifications, elements may contain duplicate attributes and/or any IDs are not unique;
 - p. Inaccessible Portable Document Format (PDFs); and
 - q. The name and role of all User Interface elements cannot be programmatically determined; items that can be set by the user cannot be programmatically set; and/or notification of changes to these items is not available to user agents, including assistive technology.

FACTUAL BACKGROUND

24. Defendant offers the <https://www.bubbagump.com/> website, to the public. The website offers features which should allow all consumers to access the goods and services which Defendant offers in connection with its physical locations. The goods and services offered by Defendant include, but are not limited to the following, which allow consumers to access an assortment of high-quality meals featuring shrimp, additional casual beef, poultry, and seafood menu items,: fried zucchini, calamari, mozzarella sticks, garlic bread baskets, salads, burger, shrimp specialties, stake, pastas, variety of seafood featured meals; and beverages such as shakes, alcoholic and non-alcoholic beverages; desserts including cakes, sundaes, and cheesecake which are available to order online and in restaurant locations for purchase. Consumers can also purchase apparel including caps, t-shirts, and drawstring backpacks; merchandise including barbecue aprons and license plate holders; drinkware including shot glasses, water bottles, and pint glasses. Customers may also make online purchases for memorabilia such as plush

1 toys, playing cards, ping pong paddles, as well as hot sauces and seasonings.
2 Further, Defendant's website allows for consumers to find restaurant locations,
3 access information about gift cards, promotions, catering services, loyalty
4 programs, career opportunities, and schedule social events.

5 25. Based on information and belief, it is Defendant's policy and practice
6 to deny Plaintiff and Class Members, along with other blind or visually-impaired
7 users, access to Defendant's website, and to therefore specifically deny the goods
8 and services that are offered and integrated with Defendant's restaurants. Due to
9 Defendant's failure and refusal to remove access barriers on its website, Plaintiff
10 and other visually-impaired persons have been and are still being denied equal and
11 full access to Defendant's restaurants, specialty food menu items, merchandise, and
12 additional services for purchase offered to the public through Defendant's Website.

Defendant's Barriers on Unruh Civil Rights Act. Cal. Civ. Code, § 51(f) Deny Plaintiff and Class Members' Access

15 26. Plaintiff is a visually-impaired and legally blind person, who cannot
16 use a computer without the assistance of screen-reading software. However,
17 Plaintiff is a proficient user of the JAWS screen-reader as well as Mac's VoiceOver
18 and use it to access the internet. Plaintiff has visited <https://www.bubbagump.com/>
19 on several separate occasions using the JAWS and/or VoiceOver screen-readers.

20 27. During Plaintiff's numerous visits to Defendant's website, Plaintiff
21 encountered multiple access barriers which denied Plaintiff full and equal access to
22 the facilities, goods, and services offered to the public and made available to the
23 public on Defendant's website and its prior iterations. Due to the widespread access
24 barriers Plaintiff and Class Members encountered on Defendant's website, Plaintiff
25 and Class Members have been deterred, on a regular basis, from accessing
26 Defendant's website. Similarly, the access barriers Plaintiff has encountered on
27 Defendant's website has deterred Plaintiff and Class Members from visiting
28 Defendant's physical locations.

1 28. While attempting to navigate Defendant's website, Plaintiff and Class
2 Members encountered multiple accessibility barriers for blind or visually-impaired
3 people that include, but are not limited to, the following:

- 4 a. Lack of Alternative Text ("alt-text"), or a text equivalent. Alt-text
5 is invisible code embedded beneath a graphic or image on a website
6 that is read to a user by a screen-reader. For graphics or images to
7 be fully accessible for screen-reader users, it requires that alt-text
8 be coded with each graphic or image so that screen-reading
9 software can speak the alt-text to describe the graphic or image
10 where a sighted user would just see the graphic or image. Alt-text
11 does not change the visual presentation, but instead a text box
12 shows when the cursor hovers over the graphic or image. The lack
13 of alt-text on graphics and images prevents screen-readers from
14 accurately vocalizing a description of the image or graphic. As a
15 result, Plaintiff and Class Members who are blind and visually-
16 impaired customers are unable to access to a variety of seafood
17 beef, and poultry meal menu items which are all available to
18 purchase online and at restaurants locations. Consumers are also
19 unable to also purchase gear merchandise, seek access to
20 information about promotions, restaurant locations, catering
21 services, career opportunities, and schedule social events.
- 22 b. Empty Links that contain No Text causing the function or purpose
23 of the link to not be presented to the user. This can introduce
24 confusion for keyboard and screen-reader users;
- 25 c. Redundant Links where adjacent links go to the same URL address
26 which results in additional navigation and repetition for keyboard
27 and screen-reader users; and

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1 d. Linked Images missing alt-text, which causes problems if an image
 2 within a link does not contain any descriptive text and that image
 3 does not have alt-text. A screen reader then has no content to
 4 present the user as to the function of the link, including information
 5 or links for and contained in PDFs.

6 29. Recently in 2020, Plaintiff attempted to do business with Defendant
 7 on Defendant's website. Plaintiff has visited prior iterations of the website,
 8 <https://www.bubbagump.com/> and also encountered barriers to access on
 9 Defendant's website.

10 30. Despite past and recent attempts to do business with Defendant on its
 11 website, the numerous access barriers contained on the website and encountered by
 12 Plaintiff have denied Plaintiff full and equal access to Defendant's website. Plaintiff
 13 and Class Members, as a result of the barriers on Defendant's website continue to
 14 be deterred on a regular basis from accessing Defendant's website. Likewise, based
 15 on the numerous access barriers Plaintiff and Class Members have been deterred
 16 and impeded from the full and equal enjoyment of goods and services offered in
 17 Defendant's restaurants and from making purchases at such physical locations.

18 **Defendant Must Remove Barriers to Its Website**

19 31. Due to the inaccessibility of the Defendant's website, blind and
 20 visually-impaired customers such as the Plaintiff, who need screen-readers, cannot
 21 fully and equally use or enjoy the facilities and services the Defendant offers to the
 22 public on its website. The access barriers the Plaintiff encountered have caused a
 23 denial of Plaintiff's full and equal access in the past and now deter Plaintiff on a
 24 regular basis from accessing the website.

25 32. These access barriers on Defendant's website has deterred Plaintiff
 26 from visiting Defendant's physical locations and enjoying them equal to sighted
 27 individuals because: Plaintiff was unable to find the location and hours of operation
 28 of Defendant's locations on its website preventing Plaintiff from visiting the

1 locations to purchase services. Plaintiff and Class Members intend to visit the
2 Defendant's locations in the near future if Plaintiff and Class Members could access
3 Defendant's website.

4 33. If the website was equally accessible to all, Plaintiff and Class
5 Members could independently navigate the website and complete a desired
6 transaction, as sighted individuals do.

7 34. Plaintiff, through Plaintiff's attempts to use the website, has actual
8 knowledge of the access barriers that make these services inaccessible and
9 independently unusable by blind and visually-impaired people.

10 35. Because simple compliance with WCAG 2.0/WCAG 2.1 would
11 provide Plaintiff and Class Members, who are visually-impaired consumers, with
12 equal access to the website, Plaintiff and Class Members allege that Defendant
13 engaged in acts of intentional discrimination, including, but not limited to, the
14 following policies or practices: constructing and maintaining a website that is
15 inaccessible to visually-impaired individuals, including Plaintiff and Class
16 Members; failing to construct and maintain a website that is sufficiently intuitive so
17 as to be equally accessible to visually-impaired individuals, including Plaintiff and
18 Class Members; and failing to take actions to correct these access barriers in the
19 face of substantial harm and discrimination to blind and visually-impaired
20 consumers, such as Plaintiff and Class Members, as a member of a protected class.

21 36. The Defendant uses standards, criteria or methods of administration
22 that have the effect of discriminating or perpetuating the discrimination against
23 others, as alleged herein.

24 37. The ADA expressly contemplates the injunctive relief that plaintiff
25 seeks in this action. In relevant part, the ADA requires:

26 In the case of violations of ... this title, injunctive relief shall include
27 an order to alter facilities to make such facilities readily accessible to
28 and usable by individuals with disabilities Where appropriate,

1 injunctive relief shall also include requiring the ... modification of a
2 policy 42 U.S.C. § 12188(a)(2).

3 38. Because Defendant's website has never been equally accessible
4 and because Defendant lacks a corporate policy that is reasonably calculated to
5 cause the Defendant's website to become and remain accessible, Plaintiff invokes
6 42 U.S.C. § 12188(a)(2) and seeks a permanent injunction requiring the Defendant
7 to retain a qualified consultant acceptable to Plaintiff to assist Defendant to comply
8 with WCAG 2.0/WCAG 2.1 guidelines for Defendant's website. The website must
9 be accessible for individuals with disabilities who use desktop computers, laptops,
10 tablets, and smartphones. Plaintiff and Class Members seek that this permanent
11 injunction require Defendant to cooperate with the agreed-upon consultant to: train
12 Defendant's employees and agents who develop the website on accessibility
13 compliance under the WCAG 2.0/WCAG 2.1 guidelines; regularly check the
14 accessibility of the website under the WCAG 2.0/WCAG 2.1 guidelines; regularly
15 test user accessibility by blind or vision-impaired persons to ensure that the
16 Defendant's website complies under the WCAG 2.0/WCAG 2.1 guidelines; and
17 develop an accessibility policy that is clearly disclosed on the Defendant's website.
18 The above provides contact information for users to report accessibility-related
19 problems and require that any third-party vendors who participate on the
20 Defendant's website to be fully accessible to the disabled by conforming with
21 WCAG 2.0/WCAG 2.1.

22 39. If Defendant's website were accessible, Plaintiff and Class Members
23 could independently access information about restaurant locations, hours, services
24 offered and services available for online purchase.

25 40. Although Defendant may currently have centralized policies regarding
26 maintaining and operating Defendant's website, Defendant lacks a plan and policy
27 reasonably calculated to make Defendant's website fully and equally accessible to,
28 and independently usable by, blind and other visually-impaired consumers.

1 41. Defendant has, upon information and belief, invested substantial sums
 2 in developing and maintaining Defendant's website and Defendant has generated
 3 significant revenue from Defendant's website. These amounts are far greater than
 4 the associated cost of making Defendant's website equally accessible to visually
 5 impaired customers. Plaintiff has also visited prior iterations of the Defendant's
 6 website, <https://www.bubbagump.com/> and also encountered such barriers.

7 42. Without injunctive relief, Plaintiff and Class Members will continue
 8 to be unable to independently use Defendant's website resulting in a violation of
 9 their rights.

10 CLASS ACTION ALLEGATIONS

11 43. Plaintiff, on behalf of himself and all others similarly situated, seeks
 12 to certify a nationwide class under Fed. R. Civ. P. 23(a) and 23(b)(2) (b)(3), the
 13 Nationwide class is initially defined as follows:

14 all legally blind individuals who have attempted to access Defendant's
 15 website by the use of a screen reading software during the applicable
 16 limitations period up to and including final judgment in this action.

17 44. The California class is initially defined as follows:

18 all legally blind individuals in the State of California who have
 19 attempted to access Defendant's website by the use of a screen reading
 20 software during the applicable limitations period up to and including
 21 final judgment in this action.

22 45. Excluded from each of the above Classes is Defendant, including any
 23 entity in which Defendant has a controlling interest, is a parent or subsidiary, or
 24 which is controlled by Defendant, as well as the officers, directors, affiliates, legal
 25 representatives, heirs, predecessors, successors, and assigns of Defendant. Also
 26 excluded are the judge and the court personnel in this case and any members of their
 27 immediate families. Plaintiff reserves the right to amend the Class definitions if
 28 discovery and further investigation reveal that the Classes should be expanded or
 otherwise modified.

1 46. *Numerosity.* Fed. R. Civ. P. 23(a)(1). This action has been brought and
 2 may properly be maintained as a class action against Defendant under Rules
 3 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact
 4 number and identities of other Class Members are unknown to Plaintiff at this time,
 5 Plaintiff is informed and believes that there are hundreds of thousands of Members
 6 in the Class. Based on the number of customers who have visited Defendant's
 7 California restaurants, it is estimated that the Class is composed of more than 10,000
 8 persons. Furthermore, even if subclasses need to be created for these consumers, it
 9 is estimated that each subclass would have thousands of Members. The Members
 10 of the Class are so numerous that joinder of all Members is impracticable and the
 11 disposition of their claims in a class action rather than in individual actions will
 12 benefit the parties and the courts.

13 47. *Typicality:* Plaintiff and Class Members' claims are typical of the
 14 claims of the Members of the Class as all Members of the Class are similarly
 15 affected by Defendant's wrongful conduct, as detailed herein.

16 48. *Adequacy:* Plaintiff will fairly and adequately protect the interests of
 17 the Members of the Class in that they have no interests antagonistic to those of the
 18 other Members of the Class. Plaintiff has retained experienced and competent
 19 counsel.

20 49. *Superiority:* A class action is superior to other available methods for
 21 the fair and efficient adjudication of this controversy. Since the damages sustained
 22 by individual Class Members may be relatively small, the expense and burden of
 23 individual litigation makes it impracticable for the Members of the Class to
 24 individually seek redress for the wrongful conduct alleged herein. Furthermore, the
 25 adjudication of this controversy through a class action will avoid the potentially
 26 inconsistent and conflicting adjudications of the claims asserted herein. There will
 27 be no difficulty in the management of this action as a class action. If Class treatment
 28 of these claims were not available Defendant would likely unfairly receive

1 thousands of dollars or more in improper revenue.

2 50. *Common Questions Predominate:* Common questions of law and fact
3 exist as to all Members of the Class and predominate over any questions solely
4 affecting individual Members of the Class. Among the common questions of law
5 and fact applicable to the Class are:

- 6 i. Whether Defendant's website, <https://www.bubbagump.com/>,
7 is inaccessible to the visually-impaired who use screen reading
8 software to access internet websites;
- 9 ii. Whether Plaintiff and Class Members have been unable to
10 access <https://www.bubbagump.com/> through the use of screen
11 reading software;
- 12 iii. Whether the deficiencies in Defendant's website violate the
13 Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et*
14 *seq.*;
- 15 iv. Whether the deficiencies in Defendant's website violate the
16 California Unruh Civil Rights Act, California Civil Code § 51
17 *et seq.*;
- 18 v. Whether, and to what extent, injunctive relief should be imposed
19 on Defendant to make <https://www.bubbagump.com/> readily
20 accessible to and usable by visually-impaired individuals;
- 21 vi. Whether Plaintiff and Class Members are entitled to recover
22 statutory damages with respect to Defendant's wrongful
23 conduct; and
- 24 vii. Whether further legal and/or equitable relief should be granted
25 by the Court in this action.

26 51. The class is readily definable and prosecution of this action as a Class
27 action will reduce the possibility of repetitious litigation. Plaintiff knows of no
28 difficulty which will be encountered in the management of this litigation which

1 would preclude the maintenance of this matter as a Class action.

2 52. The prerequisites to maintaining a class action for injunctive relief or
 3 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused
 4 to act on grounds generally applicable to the Class, thereby making appropriate final
 5 injunctive or equitable relief with respect to the Class as a whole.

6 53. The prerequisites to maintaining a class action for injunctive relief or
 7 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact
 8 common to the Class predominate over any questions affecting only individual
 9 Members and a class action is superior to other available methods for fairly and
 10 efficiently adjudicating the controversy.

11 54. The prosecution of separate actions by Members of the Class would
 12 create a risk of establishing inconsistent rulings and/or incompatible standards of
 13 conduct for Defendant. Additionally, individual actions may be dispositive of the
 14 interest of all Members of the Class although certain Class Members are not parties
 15 to such actions.

16 55. Defendant's conduct is generally applicable to the Class as a whole
 17 and Plaintiff seek, *inter alia*, equitable remedies with respect to the Class as a whole.
 18 As such, Defendant's systematic policies and practices make declaratory relief with
 19 respect to the Class as a whole appropriate.

20 COUNT I

21 **Violations of the Americans With Disabilities Act, 42 U.S.C. § 12181 et seq.**

22 (On Behalf of Plaintiff, the Nationwide Class and the California Class)

23 56. Plaintiff alleges and incorporates herein by reference each and every
 24 allegation contained in paragraphs 1 through 53, inclusive, of this Complaint as if
 25 set forth fully herein.

26 57. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*,
 27 provides: "No individual shall be discriminated against on the basis of disability in
 28 the full and equal enjoyment of the goods, services, facilities, privileges,

1 advantages, or accommodations of any place of public accommodation by any
 2 person who owns, leases (or leases to), or operates a place of public
 3 accommodation" 42 U.S.C. § 12182(a).

4 58. Under Section 302(b)(2) of Title III of the ADA, unlawful
 5 discrimination also includes, among other things: "a failure to make reasonable
 6 modifications in policies, practices, or procedures, when such modifications are
 7 necessary to afford such goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the entity can demonstrate
 9 that making such modifications would fundamentally alter the nature of such goods,
 10 services, facilities, privileges, advantages or accommodations;" and "a failure to
 11 take such steps as may be necessary to ensure that no individual with a disability is
 12 excluded, denied services, segregated or otherwise treated differently than other
 13 individuals because of the absence of auxiliary aids and services, unless the entity
 14 can demonstrate that taking such steps would fundamentally alter the nature of the
 15 good, service, facility, privilege, advantage, or accommodation being offered or
 16 would result in an undue burden" 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii). "A public
 17 accommodation shall take those steps that may be necessary to ensure that no
 18 individual with a disability is excluded, denied services, segregated, or otherwise
 19 treated differently than other individuals because of the absence of auxiliary aids
 20 and services, unless the public accommodation can demonstrate that taking those
 21 steps would fundamentally alter the nature of the goods, services, facilities,
 22 privileges, advantages, or accommodations being offered or would result in an
 23 undue burden, i.e., significant difficulty or expense" 28 C.F.R. § 36.303(a). In order
 24 to be effective, auxiliary aids and services must be provided in accessible formats,
 25 in a timely manner, and in such a way as to protect the privacy and independence
 26 of the individual with a disability" 28 C.F.R. § 36.303(c)(1)(ii).

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1 59. Defendant's restaurant locations are "public accommodations" within
 2 the meaning of 42 U.S.C. § 12181 *et seq.* Defendant generates millions of dollars
 3 in revenue from the sale of its amenities and services, privileges, advantages and
 4 accommodations in California through its locations and related services, privileges,
 5 advantages, and accommodations and its Website, <https://www.bubbagump.com/>,
 6 is a service, privilege, advantage and accommodation provided by Defendant that
 7 is inaccessible to customers who are visually-impaired like Plaintiff. This
 8 inaccessibility denies visually-impaired customers full and equal enjoyment of and
 9 access to the facilities and services, privileges, advantages, and accommodations
 10 that Defendant made available to the non-disabled public. Defendant is violating
 11 the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, in that Defendant
 12 denies visually-impaired customers the services, privileges, advantages, and
 13 accommodations provided by <https://www.bubbagump.com/>. These violations are
 14 ongoing.

15 60. Defendant's actions constitute intentional discrimination against
 16 Plaintiff and Class Members on the basis of a disability in violation of the
 17 Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* in that: Defendant has
 18 constructed a website that is inaccessible to Plaintiff and Class Members; maintains
 19 the website in this inaccessible form; and has failed to take adequate actions to
 20 correct these barriers even after being notified of the discrimination that such
 21 barriers cause.

22 61. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights
 23 set forth and incorporated therein Plaintiff requests relief as set forth below.

24 **COUNT II**

25 **Violations of the Unruh Civil Rights Act, California Civil Code § 51 *et seq.***
 26 (On Behalf of Plaintiff and the California Class)

27 62. Plaintiff alleges and incorporates herein by reference each and every
 28 allegation contained in paragraphs 1 through 53, inclusive, of this Complaint as if

1 set forth fully herein.

2 63. Defendant's locations are "business establishments" within the
 3 meaning of the California Civil Code § 51 *et seq.* Defendant generates millions of
 4 dollars in revenue from the sale of its services in California through its physical
 5 locations and related services and <https://www.bubbagump.com/> is a service
 6 provided by Defendant that is inaccessible to customers who are visually-impaired
 7 like Plaintiff and Class Members. This inaccessibility denies visually-impaired
 8 customers full and equal access to Defendant's facilities and services that Defendant
 9 makes available to the non-disabled public. Defendant is violating the Unruh Civil
 10 Rights Act, California Civil Code § 51 *et seq.*, in that Defendant is denying visually-
 11 impaired customers the services provided by <https://www.bubbagump.com/>. These
 12 violations are ongoing.

13 64. Defendant's actions constitute intentional discrimination against
 14 Plaintiff and Class Members on the basis of a disability in violation of the Unruh
 15 Civil Rights Act, Cal. Civil Code § 51 *et seq.* in that: Defendant has constructed a
 16 website that is inaccessible to Plaintiff and Class Members; maintains the website
 17 in this inaccessible form; and has failed to take adequate actions to correct these
 18 barriers even after being notified of the discrimination that such barriers cause.

19 65. Defendant is also violating the Unruh Civil Rights Act, California
 20 Civil Code § 51 *et seq.* in that the conduct alleged herein likewise constitutes a
 21 violation of various provisions of the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f)
 22 of the California Civil Code provides that a violation of the right of any individual
 23 under the ADA shall also constitute a violation of the Unruh Civil Rights Act.

24 66. The actions of Defendant were and are in violation of the Unruh Civil
 25 Rights Act, California Civil Code § 51 *et seq.*; therefore, Plaintiff and Class
 26 Members are entitled to injunctive relief remedying the discrimination.

27 67. Plaintiff and Class Members are also entitled to statutory minimum
 28 damages pursuant to California Civil Code § 52 for each and every offense.

1 68. Plaintiff and Class Members are also entitled to reasonable attorneys'
2 fees and costs.

3 69. Plaintiff and Class Members are also entitled to a preliminary and
4 permanent injunction enjoining Defendant from violating the Unruh Civil Rights
5 Act, California Civil Code § 51 *et seq.*, and requiring Defendant to take the steps
6 necessary to make <https://www.bubbagump.com/> readily accessible to and usable
7 by visually-impaired individuals.

PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff, individually and on behalf of all Class Members,
11 respectfully requests that the Court enter judgment in his favor and against
12 Defendant as follows:

- A. For an Order certifying the Nationwide Class and California Class as defined herein and appointing Plaintiff and his Counsel to represent the Nationwide Class and the California Class;
 - B. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and (2) and section 52.1 of the California Civil Code enjoining Defendant from violating the Unruh Civil Rights Act, the ADA and requiring Defendant to take the steps necessary to make <https://www.bubbagump.com/> readily accessible to and usable by visually-impaired individuals;
 - C. An award of statutory minimum damages of \$4,000 per offense per person pursuant to section 52(a) of the California Civil Code.
 - D. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a), 52.1(h), and 42 U.S.C. § 12205;
 - E. For pre-judgment interest to the extent permitted by law;
 - F. For costs of suit; and
 - G. For such other and further relief as the Court deems just and proper.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of himself and all others similarly situated, hereby
3 demands a jury trial for all claims so triable.

4

5 Dated: April 21, 2020

Respectfully Submitted,

6

7 _____
8 /s/ *Thiago M. Coelho*

9 Thiago M. Coelho

10 Bobby Saadian

11 **WILSHIRE LAW FIRM**

12 *Attorneys for Plaintiff and*

13 *Proposed Class*